

CENTER FOR DISABILITY ACCESS
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UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

Scott Johnson,

Plaintiff,

v.

Manju Kanti Patel, in individual
and representative capacity as
trustee Under The Kanti & Manju
Patel Living Trust Dated January 8,
2001;
Kanti R. Patel, in individual and
representative capacity as trustee
Under The Kanti & Manju Patel
Living Trust Dated January 8, 2001;
and Does 1-10,

Defendants.

Case No.

**Complaint For Damages And
Injunctive Relief For Violations
Of: American's With Disabilities
Act; Unruh Civil Rights Act**

Plaintiff Scott Johnson complains of Manju Kanti Patel, in individual and representative capacity as trustee Under The Kanti & Manju Patel Living Trust Dated January 8, 2001; Kanti R. Patel, in individual and representative capacity as trustee Under The Kanti & Manju Patel Living Trust Dated January 8, 2001; and Does 1-10 ("Defendants"), and alleges as follows:

PARTIES:

1. Plaintiff is a California resident with physical disabilities. Plaintiff is a

1 level C-5 quadriplegic. He cannot walk and also has significant manual
2 dexterity impairments. He uses a wheelchair for mobility and has a specially
3 equipped van.

4 2. Defendants Manju Kanti Patel and Kanti R. Patel, in individual and
5 representative capacity as trustee Under The Kanti & Manju Patel Living Trust
6 Dated January 8, 2001, owned the real property located at or about 1704 El
7 Camino Real, Menlo Park, California, between March 2018 and April 2019.

8 3. Defendants Defendants Manju Kanti Patel and Kanti R. Patel, in
9 individual and representative capacity as trustee Under The Kanti & Manju
10 Patel Living Trust Dated January 8, 2001, own the real property located at or
11 about 1704 El Camino Real, Menlo Park, California, currently.

12 4. Defendants Manju Kanti Patel and Kanti R. Patel owned Red Cottage
13 Inn & Suites located at or about 1704 El Camino Real, Menlo Park, California,
14 between March 2018 and April 2019.

15 5. Defendants Manju Kanti Patel and Kanti R. Patel own Red Cottage Inn
16 & Suites ("Motel") located at or about 1704 El Camino Real, Menlo Park,
17 California, currently.

18 6. Plaintiff does not know the true names of Defendants, their business
19 capacities, their ownership connection to the property and business, or their
20 relative responsibilities in causing the access violations herein complained of,
21 and alleges a joint venture and common enterprise by all such Defendants.
22 Plaintiff is informed and believes that each of the Defendants herein,
23 including Does 1 through 10, inclusive, is responsible in some capacity for the
24 events herein alleged, or is a necessary party for obtaining appropriate relief.
25 Plaintiff will seek leave to amend when the true names, capacities,
26 connections, and responsibilities of the Defendants and Does 1 through 10,
27 inclusive, are ascertained.

JURISDICTION & VENUE:

7. The Court has subject matter jurisdiction over the action pursuant to 28 U.S.C. § 1331 and § 1343(a)(3) & (a)(4) for violations of the Americans with Disabilities Act of 1990, 42 U.S.C. § 12101, et seq.

8. Pursuant to supplemental jurisdiction, an attendant and related cause of action, arising from the same nucleus of operative facts and arising out of the same transactions, is also brought under California's Unruh Civil Rights Act, which act expressly incorporates the Americans with Disabilities Act.

9. Venue is proper in this court pursuant to 28 U.S.C. § 1391(b) and is founded on the fact that the real property which is the subject of this action is located in this district and that Plaintiff's cause of action arose in this district.

FACTUAL ALLEGATIONS:

10. Plaintiff went to the Motel in March 2018, June 2018 and April 2019 with the intention to avail himself of its goods and services, motivated in part to determine if the defendants comply with the disability access laws.

11. The Motel is a facility open to the public, a place of public accommodation, and a business establishment.

12. Unfortunately, on the dates of the plaintiff's visits, the defendants failed to provide accessible guestrooms.

13. On information and belief the defendants currently fail to provide accessible guestrooms.

14. Additionally, on the dates of the plaintiff's visits, the defendants failed to provide accessible service counters.

15. On information and belief the defendants currently fail to provide accessible service counters.

16. Plaintiff personally encountered these barriers.

17. By failing to provide accessible facilities, the defendants denied the

1 plaintiff full and equal access.

2 18. The lack of accessible facilities created difficulty and discomfort for the
3 Plaintiff.

4 19. The defendants have failed to maintain in working and useable
5 conditions those features required to provide ready access to persons with
6 disabilities.

7 20. The barriers identified above are easily removed without much
8 difficulty or expense. They are the types of barriers identified by the
9 Department of Justice as presumably readily achievable to remove and, in fact,
10 these barriers are readily achievable to remove. Moreover, there are numerous
11 alternative accommodations that could be made to provide a greater level of
12 access if complete removal were not achievable.

13 21. Plaintiff will return to the Motel to avail himself of its goods or services
14 and to determine compliance with the disability access laws once it is
15 represented to him that the Motel and its facilities are accessible. Plaintiff is
16 currently deterred from doing so because of his knowledge of the existing
17 barriers and his uncertainty about the existence of yet other barriers on the
18 site. If the barriers are not removed, the plaintiff will face unlawful and
19 discriminatory barriers again.

20 22. Given the obvious and blatant nature of the barriers and violations
21 alleged herein, the plaintiff alleges, on information and belief, that there are
22 other violations and barriers on the site that relate to his disability. Plaintiff will
23 amend the complaint, to provide proper notice regarding the scope of this
24 lawsuit, once he conducts a site inspection. However, please be on notice that
25 the plaintiff seeks to have all barriers related to his disability remedied. See
26 *Doran v. 7-11*, 524 F.3d 1034 (9th Cir. 2008) (holding that once a plaintiff
27 encounters one barrier at a site, he can sue to have all barriers that relate to his
28 disability removed regardless of whether he personally encountered them).

I. FIRST CAUSE OF ACTION: VIOLATION OF THE AMERICANS WITH DISABILITIES ACT OF 1990 (On behalf of Plaintiff and against all Defendants.) (42 U.S.C. section 12101, et seq.)

23. Plaintiff re-pleads and incorporates by reference, as if fully set forth again herein, the allegations contained in all prior paragraphs of this complaint.

24. Under the ADA, it is an act of discrimination to fail to ensure that the privileges, advantages, accommodations, facilities, goods and services of any place of public accommodation is offered on a full and equal basis by anyone who owns, leases, or operates a place of public accommodation. See 42 U.S.C. § 12182(a). Discrimination is defined, inter alia, as follows:

- a. A failure to make reasonable modifications in policies, practices, or procedures, when such modifications are necessary to afford goods, services, facilities, privileges, advantages, or accommodations to individuals with disabilities, unless the accommodation would work a fundamental alteration of those services and facilities. 42 U.S.C. § 12182(b)(2)(A)(ii).
- b. A failure to remove architectural barriers where such removal is readily achievable. 42 U.S.C. § 12182(b)(2)(A)(iv). Barriers are defined by reference to the ADA Standards.
- c. A failure to make alterations in such a manner that, to the maximum extent feasible, the altered portions of the facility are readily accessible to and usable by individuals with disabilities, including individuals who use wheelchairs or to ensure that, to the maximum extent feasible, the path of travel to the altered area and the bathrooms, telephones, and drinking fountains serving the altered area, are readily accessible to and usable by individuals with disabilities. 42 U.S.C. § 12183(a)(2).

1 25. When a business provides facilities such as guestrooms, it must provide
2 accessible guestrooms.

3 26. Here, accessible guestrooms have not been provided.

4 27. When a business provides facilities such as service counters, it must
5 provide accessible service counters.

6 28. Here, accessible service counters have not been provided.

7 29. The Safe Harbor provisions of the 2010 Standards are not applicable
8 here because the conditions challenged in this lawsuit do not comply with the
9 1991 Standards.

10 30. A public accommodation must maintain in operable working condition
11 those features of its facilities and equipment that are required to be readily
12 accessible to and usable by persons with disabilities. 28 C.F.R. § 36.211(a).

13 31. Here, the failure to ensure that the accessible facilities were available
14 and ready to be used by the plaintiff is a violation of the law.

15
16 **II. SECOND CAUSE OF ACTION: VIOLATION OF THE UNRUH CIVIL**
17 **RIGHTS ACT** (On behalf of Plaintiff and against all Defendants.) (Cal. Civ.
18 Code § 51-53.)

19 32. Plaintiff repleads and incorporates by reference, as if fully set forth
20 again herein, the allegations contained in all prior paragraphs of this
21 complaint. The Unruh Civil Rights Act (“Unruh Act”) guarantees, inter alia,
22 that persons with disabilities are entitled to full and equal accommodations,
23 advantages, facilities, privileges, or services in all business establishment of
24 every kind whatsoever within the jurisdiction of the State of California. Cal.
25 Civ. Code § 51(b).

26 33. The Unruh Act provides that a violation of the ADA is a violation of the
27 Unruh Act. Cal. Civ. Code, § 51(f).

28 34. Defendants’ acts and omissions, as herein alleged, have violated the

Unruh Act by, inter alia, denying, or aiding, or inciting the denial of, Plaintiff's rights to full and equal use of the accommodations, advantages, facilities, privileges, or services offered.

35. Because the violation of the Unruh Civil Rights Act resulted in difficulty, discomfort or embarrassment for the plaintiff, the defendants are also each responsible for statutory damages, i.e., a civil penalty. (Civ. Code § 55.56(a)-(c).)

36. Although the plaintiff was markedly frustrated by facing discriminatory barriers, even manifesting itself with minor and fleeting physical symptoms, the plaintiff does not value this very modest physical personal injury greater than the amount of the statutory damages.

PRAYER:

Wherefore, Plaintiff prays that this Court award damages and provide relief as follows:

1. For injunctive relief, compelling Defendants to comply with the Americans with Disabilities Act and the Unruh Civil Rights Act. Note: the plaintiff is not invoking section 55 of the California Civil Code and is not seeking injunctive relief under the Disabled Persons Act at all.

2. Damages under the Unruh Civil Rights Act, which provides for actual damages and a statutory minimum of \$4,000 for each offense.

3. Reasonable attorney fees, litigation expenses and costs of suit, pursuant to 42 U.S.C. § 12205; and Cal. Civ. Code §§ 52.

Dated: October 14, 2019

CENTER FOR DISABILITY ACCESS

By:



Amanda Seabock, Esq.
Attorney for plaintiff